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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233690
Party	Defendant Rusty Ralph Lemorande
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Submission	Opposition/Response to Motion
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Date	02/18/2020
Attachments	Motion to Set Aside Dismissal of Summary Judgement Motion due to Late Filing UPLOAD.pdf(95022 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

Image Ten, Inc.

Opposer,

Vs.

Rusty Ralph Lemorande

Opposition No. 91233690

Serial No.: 87/090468

APPLICANT'S MOTION TO SET ASIDE
DISMISSAL OF ITS MOTION FOR
SUMMARY JUDGEMENT

INTRODUCTION

Applicant petitions that the TTAB set aside dismissal of Applicant's Summary Judgement Motion due to failure to timely file.

Summary Judgement motions provide for expeditious resolution of litigated matters, saving both parties and the adjudicating entity itself (in this case, the TTAB) from the time and expense of prolonged trial litigation, especially when there are no disputed matters of fact and judgement can be made as a matter of law.

Applicant's SJM filing was less than 24 hours late (in fact, a matter of several hours only).

Opposer would not be prejudiced by the TTAB allowing that the motion be adjudicated.

Although terms of a settlement discussion are not admissible as evidence, Applicant argues that an 11th hour, bad faith reversal of a long-in-discussion settlement discussion occasioned by a party, causing prejudice to the other, could be considered a valid reason to allow this set aside.

BACKGROUND

The TTAB is aware of the nearly three-year history of this Opposition proceeding. Therefore, Applicant will merely briefly summarize now.

This history includes, amongst other things, failure to failure participate in discovery proceeding causing needless motions to compel, change of counsel by Opposer, untimely submissions by Opposer, requests for Applicant to deal directly with a non-lawyer representative of Opposer, and other dilatory and evasive actions which have seriously prejudiced Applicant's legal and bona fide business intentions (for which the ITU procedure was created) costing both

Applicant and the TTAB unnecessary expenditures of resources, time and, in some instances, money.

Most recently, after several months at attempts to settle the matter, Applicant, working with a non-lawyer on behalf of Opposer which requested noninvolvement of its counsel, was prejudiced by an 11th hour maneuver when counsel for Opposer suddenly reappeared and reversed the agreed-upon and long-in-negotiation settlement agreement. Therefore, in order to avoid further losses and time wasted, Applicant filed its Summary Judgment motion.

ARGUMENT

A Summary Judgement Motion relies on the proposition that when there are no disputed matters of fact, judgement can be made as a matter of law.

There are no disputed matters of fact in this matter, and judgment can be made as a matter of law.

Applicant's delay in filing its motion was due largely to the limited time remaining to file the motion caused by Opposer's bad faith dissembling in what Applicant believed to be a good faith, time-consuming effort at reaching settlement.

Opposer will not be prejudiced by allowing Applicant's motion to be adjudicated, and perhaps be benefitted by the possible resolution of this long-standing Opposition proceeding initiated by Opposer, one unnecessarily delayed by continuous, dilatory failures to comply with discovery, premature filings, change of counsel, requests to settle without counsel, and other including its most recent bad faith denial of an agreed-upon settlement conclusion.

CONCLUSION

In the interest of fairness to Applicant, the TTAB, and even Opposer, adjudication of this matter without the requirements of a lengthy trial period, especially given there are no disputed

matters of fact, appears proper and advantageous to all. In addition, Applicant's delay in filing of a few hours does not prejudice Opposer, and setting aside the dismissal of Applicant's untimely filing would rebalance somewhat the great prejudice and unfairness occasioned by Opposer by its lengthy settlement procedure and 11th hour reversal after many months spent by Applicant in that pursuit.

Accordingly, Applicant respectfully submits that the TTAB set aside the dismissal of Applicant's Motion for Summary Judgement.

Dated February 17, 2020

Respectfully Submitted

Rusty Lemorande (Applicant

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent to attorneys for Opposer in addition to the manager of Image Ten who asked to be communicated with directly in this Opposition, on this 17th Day of February 2020, via email to the following:

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